



Agenda Date: 4/22/03

Agenda Item: IV E6

## **STATE OF NEW JERSEY**

**Board of Public Utilities**

**Two Gateway Center**

**Newark, NJ 07102**

**[www.bpu.state.nj.us](http://www.bpu.state.nj.us)**

### TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT APPLICATION OF	)	<u>ORDER APPROVING</u>
VERIZON NEW JERSEY INC. AND IG2, INC. FOR	)	<u>INTERCONNECTION</u>
APPROVAL OF AN INTERCONNECTION AGREEMENT	)	<u>AGREEMENT</u>
UNDER SECTION 252 OF THE TELECOMMUNI-	)	
CATIONS ACT OF 1996	)	DOCKET NO. TO01120822

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated December 14, 2001, Verizon New Jersey Inc. (Verizon), a New Jersey corporation and IG2, Inc. (IG2) a Delaware corporation, (individually, a Party, and jointly, the Parties), pursuant to Section 252(e) of the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, (codified in scattered sections of 47 U.S.C. §151 et seq.) (the Act), submitted to the Board of Public Utilities (Board) a joint application (Application) for approval of a certain negotiated interconnection agreement dated September 14, 2001 (Agreement).

The Agreement sets forth the terms, conditions and prices under which Verizon will offer and provide access to unbundled network elements, ancillary services, and wholesale telecommunications services available for resale to IG2. The Agreement is in effect until September 13, 2003, and thereafter the Agreement shall continue in full force and effect unless terminated as provided in the Agreement.

The Ratepayer Advocate (Advocate) submitted comments September 27, 2002 to the Board regarding this negotiated interconnection agreement, recommending that Section 37.2.2 of the agreement be stricken as inconsistent with the public interest and discriminatory to other carriers.

Section 37.2.2 of the agreement concerns the Reservation of Rights by the parties and reads as follows:

IG2 acknowledges that it has been advised by Verizon that it is Verizon's position that:

For purposes of Appendix D Sections 31 and 32 of the Merger Order, such provisions shall not be deemed to have been voluntarily negotiated

or agreed to by Verizon and shall not be available to carriers pursuant to Appendix D, Sections 31 and 32 of the Merger Order.

The Advocate has interpreted this paragraph to mean that the provisions contained in this agreement are not available to other interested carriers, contrary to the federal Telecommunications Act of 1996 (Act). Further, the Advocate contends that the inclusion of this language is an attempt by Verizon to deny carriers the benefits of Sections 31 and 32 of the Merger Order. It is not the understanding or interpretation of the Board that this agreement in total, as presented by the parties, is a non negotiated interconnection agreement. As such, no provision therein can be read to void the availability of each term and condition of the agreement to other interested carriers. A contract between two parties stating the understanding of one of the contracting party's positions concerning a separate document can only be read as being advisory and is subject to challenge by any other interested carrier if used to prevent other carriers from opting in to the agreement. The parties to this agreement did not exercise a challenge to the inclusion of this language in this agreement.

In addition, the Advocate recommended that the Board reject Condition 3 of the Pricing Section of the agreement as being inconsistent with FCC rules regarding price caps. Condition 3 provides:

...the Charges that IG2 bills Verizon for IG2's Services shall not exceed the Charges for Verizon's comparable Services, except to the extent that IG2's cost to provide such Services to Verizon exceeds the Charges for Verizon's comparable Services and IG2 has demonstrated such cost to Verizon, or, at Verizon's request, to the Commission or the FCC.

The Advocate interpreted this provision as an attempt by Verizon to unilaterally place a price cap on IG2. However, this pricing arrangement merely establishes that the parties voluntarily agree to maintain the same price for the same service to their respective customers for business reasons. Consensual pricing terms in a contract voluntarily negotiated cannot be construed as the unlawful imposition of a rate by Verizon upon the other carrier. The carrier, as part of the contract, has consented that it shall not charge rates that exceed the charges of Verizon for comparable services except in cases where the cost to IG2 exceeds the rate charged by Verizon and IG2 can demonstrate that cost difference to Verizon.

Accordingly, the Board FINDS that Section 37.2.2, shall not be excluded as it does not prove to be discriminatory to other carriers, nor is it contrary to the public interest. The Act, as articulated in Section 252(e)2(A) provides that a Commission can reject a voluntarily negotiated interconnection agreement only when the agreement is discriminatory to carriers not a party to the agreement or when the agreement is inconsistent with the public interest. This agreement is neither discriminatory nor is it contrary to the public interest, as it does not serve to limit a carrier's rights under the Act or the Merger Order to opt into the terms and conditions of an interconnection agreement.

Unlike the case cited by the Advocate, which was heard by the FCC in lieu of the Virginia Commission, Verizon, in this instance, is not imposing a price cap on a captive customer. Memorandum Opinion and Order, I/M/O Petition of WorldCom, Inc., et al., Pursuant to Section 252(e)(5) of the Communications Act For Presumption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Verizon Virginia Inc. and for Arbitration, Docket Nos. 00-128, 00-249 and 00-251, DA 02-1731 (July 17, 2002) at ¶ at 285. Therefore, the Board FINDS that Condition 3 of the pricing agreement between the parties shall remain as written and contracted by the parties.

The Board's review of the Agreement and the record in this matter indicates that the Agreement is consistent with the public interest, convenience and necessity, and that the Agreement does not discriminate against telecommunications carriers not parties to the Agreement. Therefore, the Board FINDS that the Agreement meets the standards set forth in the Act, and HEREBY APPROVES the Agreement as presented by the Parties. This approval should not be construed as preapproval of any future petitions for rate recovery of costs incurred pursuant to the Agreement, nor shall the Board be bound by provisions within the Agreement regarding the confidentiality of information.

The Board notes that amendments or modifications to Board approved interconnection agreements are subject to Board review and approval. No agreement shall be read, nor does the Board believe the Parties to the Agreement intend that it be read, to limit the authority of the Board under Section 252(e) of the Act to review interconnection agreements. Accordingly, until and unless otherwise provided by the Board, subsequent amendments or modifications to the Agreement approved herein shall be subject to review and approval by the Board.

DATED: 4/24/03

BOARD OF PUBLIC UTILITIES  
BY:

signed  
JEANNE M. FOX  
PRESIDENT

signed  
FREDERICK F. BUTLER  
COMMISSIONER

signed  
CAROL J. MURPHY  
COMMISSIONER

signed  
CONNIE O. HUGHES  
COMMISSIONER

signed  
JACK ALTER  
COMMISSIONER

ATTEST:

signed

KRISTI IZZO  
SECRETARY